



LUCAS COUNTY BOARD OF REVISION

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Dear Taxpayer:

On May 21, 1997 the Ohio Supreme Court decided the case of Sharon Village Limited v. Licking County Board of Revision, "78 Ohio St.3d 479 (1997)." In this case, the court ruled that the signing and filing of a complaint with a Board of Revision is the practice of law. Subsequently, the Board of Tax Appeals (BTA) has dismissed numerous appeals pursuant to this ruling where the named complainant in these cases is other than the named owner and is not a licensed attorney.

Although the Lucas County Board of Revision's rules allow for persons who are not attorneys to sign and file complaints in certain circumstances (see rule #15), we cannot guarantee that complaints filed in violation of Sharon Village and the subsequent BTA rulings will be accepted. We have filed an objection with the BTA to dismissals consistent with our rules, yet we will ultimately be bound by the rulings of the BTA and the Ohio Supreme Court.

Attached is a brief summary of a few of the Board of Tax Appeals rulings subsequent to the Sharon Village case. If your complaint falls into one or more of these categories, or if you are unsure of the validity of your complaint, please consult legal counsel. (Filed complaints may not be amended after March 31, 1998).

Upon reading of the enclosed materials, please feel free to telephone Monnie Berger, Board of Revision Secretary, at 419-213-4464 if you need further information concerning the proper filing of a Board of revision complaint.

Sincerely,

The Lucas County Board of Revision

Harry Barlos, Lucas County Commissioner

Larry A. Kaczala, Lucas County Auditor

Ray L. Kest, Lucas County Treasurer

/sah
enclosures

Derby Downs Limited, Appellant, v. Licking County Board of Revision et al., Appellees

Cherry Lee Limited et al. Appellants, v. Licking County Board of Revision et al., Appellees

[Cite as Sharon Village Ltd. v. Licking Cty. Bd. Of Revision (1997) ____ Ohio St. d. ____]

Unauthorized practice of law – Preparation and filing of a complaint with a board of revision constitutes the practice of law.

(Nos. 95-2591, 95-2594 and 95-2596-Submitted February 19, 1997 –Decided May 21, 1997

Appeals from the Board of Tax Appeals, Nos. 94M1214, 94M1215, 94M1325 and 94M1326

Appellants, Sharon Village Limited, Derby Downs Limited, Cherry Lee Limited and Realty Development Corp. –No. 3, are owned by Earl Shurtz. Shurtz contacted Doug Parobek, president of Ambassador Research, Inc., to determine whether the real estate property taxes could be reduced for tax year 1993. Consequently, Parobek prepared and filed complaints with the Licking County Board of Revision (“BOR”) seeking reductions for each property. The BOR, essentially, issued decisions of no change on appeal to the Board of Tax Appeals (“BTA”), pursuant to motions to dismiss filed by the school board, the BTA ruled that the BOR had lacked jurisdiction to hear the complaints because Parobek, a non-attorney, had initiated the proceedings. The BTA dismissed the appeals.

The cases have been consolidated for appeal.

The cause is now before this court upon appeals as a matter of right

Todd W. Sleggs, for appellants

Robert L. Becker, Licking County Prosecuting Attorney, and Pauline E. O’Neill, Assistant Prosecuting Attorney, for appellees Licking County Board of Revision and Auditor.

Teaford, Rich, Coffman & Wheeler and Karol Cassell Fox, for appellee Newark City School District Board of Education.

Blaugrund, Gabel, Herbert and Mesriow, Steven A. Martin and Christopher B. McNeil, urging reversal for amicus curiae, Ohio Society of Certified Public Accountants.

Cassity Law Offices and Robin J. Levine, urging reversal for amici curiae, Institute of Property Taxation and National Council of Property Tax Consultants.

Jones, Day, Reavis & Pogue and David A. Kutik; Robert Fay, Buckley, King and Bluso and John A. Hallbauer, urging affirmance for amicus curiae, Cleveland Bar Association.

Ronald J. O'Brien, Franklin County Prosecuting Attorney, and James R. Gorry, Assistant Prosecuting Attorney, urging affirmance for amici curiae, Franklin County Auditor and Ohio County Auditors' Association.

Eugene P. Whetzel, urging affirmance for amicus curiae, Ohio State Bar Association.

Francis E. Sweeney, Sr., J. In this case we are not asked to decide whether a taxpayer may prepare and file a complaint with the BOR. Clearly, such action is permissible. See R.C. 5715.13. Instead, the sole issue presented to us is whether appellants' agent, a nonlawyer, engaged in the unauthorized practice of law when he prepared and filed the complaints with the BOR. For the following reasons, we answer this question in the affirmative. Accordingly, we affirm the BTA.

R.C 4705.01 governs the practice of law in Ohio. It states:

"No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.***"

According to Section 5, Article IV of the Ohio Constitution, the regulation of the practice of law is vested exclusively in the Ohio Supreme Court. Pursuant to this grant of authority, we have set forth a broad definition of the "practice of law".

"The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law." *Land Title Abstract & Trust Co. v. Dworken* (1934) 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 2d 650, paragraph one of the syllabus.

Recently, we reaffirmed this holding in *Cincinnati Bar Assn. v. Estep* (1995), 74 Ohio St.d. 172, 657 N.E. 2d 499.

In exploring the contours of our definition, the court in *Special Master Commrs. v. McCahan* (C.P. 1960), 83 Ohio Law abs. 1, 14 O.O. 2d 221, 167 N.E. 2d 541, observed:

"It is clear that a licensed attorney in the practice of law generally engages in three principal types of professional activity. These types are legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents and papers requiring knowledge of legal principles which is not possessed by an ordinary laymen; and appearance for clients before public tribunals, which

possess the power and authority to determine rights of life, liberty and property according to law, in order to assist in the property interpretation and enforcement of law.” Id. At 11,14 O.O.2d at 229, 167 N.E. 2d at 550.

To determine whether appellants’ agent engaged in the unauthorized practice of law, we need to consider the procedure at the board of revision and understand the purpose and impact of a complaint filed there. We turn now to this task. – A board of revision is a quasi-judicial body. *Swetland v. Evatt* (1941), 139 Ohio St. 6, 37 N.E. 2d 601, paragraph nine of the syllabus. To invoke its jurisdiction, it is necessary to file a verified complaint pursuant to R.C. 5715.13 and R.C. 5715.19. As these requirements are jurisdictional, the failure to fully and properly complete the complaint will result in dismissal of the action. *Stanjim Co. v. Mahoning Cty. Bd. Of Revision* (1974), 38 Ohio St. 2d 233, 67 O.O. 2d 296, 313 N.E. 2d 14.

Further, R.C. 5715.19 (A)(2) prohibits the filing of more than one board of revision complaint within period unless the specific exceptions apply. Therefore, if a complaint is improperly completed and dismissed, the property owner has lost the right to challenge the value of that property for up to three years, absent a specific change in circumstances. If an attorney improperly completed and filed a complaint, the client would have the ability to assert a malpractice claim. However, we are troubled by the very real possibility that a property owner would be left with no recourse if a non-attorney negligently prepared and filed the complaint. Even if the non-attorney agent carried malpractice coverage, the insurance carrier would most likely deny the claim upon finding that it involved the practice of law.

Moreover, the complaint is filed for the purpose of initiating an adversarial proceeding just as any other complaint does. A board of revision is required by R.C. 5715.19 to give proper notice to property owners and boards of education when a complaint is filed by other parties. Under R.C. 5715.11, the board of revision hears and investigates all complaints. A board of revision is also required to give adequate notice of hearing dates and times so that all parties may participate.

The board of revision, composed of the county auditor, the county treasurer, and the president of the board of county commissioners, is a deciding tribunal. *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. Of Revision* (1988), 38 Ohio St. d. 198, 200, 527 N.E. 2d 874, 876. At a board of revision hearing, the parties may be given an opportunity to present evidence in the form of documents and testimony, question and cross-examine witnesses, and make legal arguments in support of their positions. A property owner failing to provide known and available evidence is barred by R.C. 5715.19 (G) from later presenting that evidence on appeal absent a showing of good cause or an order by the BTA or common pleas court, pursuant to R.C. 5717.01 or 5717.05. Persons testifying before the board of revision must do so under oath, as in any court of law. R.C. 5715.10. If unusual legal issues are raised, the board may request briefs or memoranda on those issues.

Pursuant to R.C. 5715.08, 5717.01 and 5717.05, the board of revision is required to make and keep a record on each complaint and to certify a transcript of the record of the proceedings and all evidence offered in connection with any complaint appealed to either the BTA or the common pleas court.

In addition, the initiating of a board of revision action places the property owner at risk. For example, if an owner or non-attorney files for a decrease and a board of education files a counter complaint requesting an increase, the property owner risks paying more in taxes. This is yet another reason why these matters should be left to an attorney to handle. In view of the above, we find this case easily fits within the broad definition embraced in Dworken and explored in Special Master Commrs. Parobek prepared legal documents, gave professional advice to his clients, and in one instance, even appeared before the BOR on their behalf. Contrary to appellants' contention, this case is unlike *Gustafson v. V.C. Taylor & Sons, Inc.* (1941), 138 Ohio St. 392, 20 O.O. 484, 35 N.E. 2d 435, where this court permitted real estate brokers to complete preprinted real estate contracts by supplying simple, factual materials such as the date, price, name of the purchaser, location of the property, date of giving possession, and duration of the offer. The court concluded that these actions require ordinary intelligence and not the skill of a lawyer.

We find that there are crucial differences between *Gustafson* and this case. First, the forms that were filled out in *Gustafson* were not legally binding until they were signed by the actual parties to the contract. Further, the real estate forms did not begin a quasi-judicial proceeding that would establish a record and place the owners at risk of having their taxes increased. Finally, the real estate forms did not contain statutorily defined jurisdictional requirements that, if not properly met, barred the rights of the owners to contest their valuations.

Nor is *Jemo Assoc., Inc. v. Lindley* (1980), 64 Ohio St. 2d 365, 18 O.O. 3d 518, 415 N.E. 2d 292, controlling. The question before the court in that case involved a corporation's notice of appeal to the BTA pursuant to R. C. 5717.02. The court specifically stated that whether the agent who had signed the notice had engaged in the unauthorized practice of law was irrelevant to the issue before the court. *Id.* At 367, 18 O.O. 3d at 519, 415 N.E. 2d at 294, fn.4.

We also reject appellants' assertion the R.C. 5715.13 provides the legislative authority for their position. R.C. 5715.13 states that a board of revision may make no decrease in "any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefore, verified by oath, showing the facts upon which it is claimed such decrease should be made." (Emphasis added.) We interpret the term "agent" as used in R.C. 5715.13 to include the affected party's attorney and, in the case of a corporation, a regularly connected agent who is an attorney authorized by the corporation and possessing sufficient knowledge to verify the facts averred in the complaint.

Therefore, we hold that the preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law. As the tax agent involved in these cases was not an attorney, his actions constitute the unauthorized practice of law. Accordingly, we affirm the BTA

Decisions affirmed.

Moyer, C.J., Douglas, Resnick, Pfeifer and Lundberg Stratton, JJ., concur Cook, J., concurs in the syllabus and judgment only.

Sharon Village Checklist

Various Situations:

1. Prospective v. Retroactive.

Sharon Village is to be applied retrospectively to all open cases. *CP Investments, Ltd. v. Cuyahoga Cty. Bd. Of Revision* (September 19, 1997), BTA Case No. 97-T-297.

2. Complaint drafted by attorney but signed by corporate officer.

The signing of the complaint constitutes the practice of law. Thus, if it is signed by a non-attorney agent, the complaint is jurisdictionally defective. *Bd. Of Worthington City School District v. Franklin County Bd. Of Revision* (August 8, 1997), BTA Case No. 96-D-1218 [Ameritech]

3. Attorney handled all aspects of the case, other than signing.

The fact that an attorney handled all aspects of the case, other than signing, including appearing at the Board of Revision hearing, does not cure the jurisdictional defect. *Columbia Building Co. v. Montgomery Cty. Bd. Of Revision* (September 12, 1997), BTA Case No. 95-R-997.

4. Complaint amended to substitute attorney as agent.

Any amendment after the filing deadline does not relate back. Accordingly, the jurisdictional defect at the time of filing is not cured by amending the complaint to substitute the attorney as agent. *CP Investments, Ltd. v. Cuyahoga Cty. Bd. Of Revision* (September 19, 1997), BTA Case No. 97-T-297.

5. Non-attorney agent is not a "tax valuation specialist" and is not compensated.

The fact that the non-attorney who signed the complaint was not a tax specialist, and was to receive no compensation is irrelevant to whether his actions constituted the practice of law. *CP Investments, Ltd. v. Cuyahoga Cty. Bd. Of Revision* (September 19, 1997), BTA Case No. 97-T-297.

Various Types of Entities:

1. **Individual:** An individual is not prohibited from preparing and filing a complaint for himself. *Sharon Village* and R. C. § 4705.01. However, a non-attorney may not prepare or file a complaint for another individual owner of property. This included family trusts.
2. **Corporation:** Complaint must be prepared and filed by an attorney. A corporation does not have authority to engage in the practice of law. R.C. § 4705.01, *Sharon Village Ltd. v. Licking Cty. Bd. Of Revision* (1997), 78 Ohio St. d. 479.
3. **Limited Liability Corporation:** Complaint must be prepared and filed by an attorney. A limited liability corporation does not have authority to engage in the practice of law. Although this issue has not yet been addressed in an order, *Sharon Village* should apply.
4. **Limited Partnership:**
 - a. **Corporate General Partner:** The general partner acts for a limited partnership. Since the one filing the complaint is a corporation, it is clear that an attorney should be required.
 - b. **Individual General Partner:** Although not typical, there are limited partnerships with individuals as general partners. Although this issue has not yet been addressed in an order, *Sharon Village* is likely to apply.
5. **General Partnership:** Although this issue has not yet been addressed in an order, *Sharon Village is likely to apply.*

R.C. § 4705.01:

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or in the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.***

Sharon Village Ltd. v. Licking Cty. Bd. Of Revision (1997), 78 Ohio St. d 479:

Syllabus: The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law.